

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN THE MATTER OF:

ABIMAEL ORTIZ FIGUEROA

Debtor

DLJ MORTGAGE CAPITAL INC.

Movant

ABIMAEL ORTIZ FIGUEROA

Debtor

JOSE RAMON CARRION MORALES, ESQ.

Chapter 13 Trustee

Respondents

CASE NO.: **16-00280 (BKT)**

CHAPTER 13

MOTION FOR RELIEF FROM STAY PURSUANT TO 11 U.S.C. §362(d)(1)

TO THE HONORABLE COURT:

COMES NOW secured creditor **DLJ MORTGAGE CAPITAL INC.**, hereinafter referred to as **(Movant)**, through the undersigned counsel and very respectfully states, alleges and prays as follows:

1. **Movant** holds a secured claim against **Debtor** estate, by virtue of being the holder in due course of a Mortgage note in the principal sum of \$86,000.00, plus interest at an annual rate of 7½ %, which encumbers **Debtor** real property located at SR 1 Km 45.2 Lote #3, Bo. Beatriz, Caguas, Puerto Rico. **(See claim no. 3.)**

2. By filing the instant petition, all foreclosure proceedings against **Debtor** and the aforementioned property was stayed.

3. Debtor's Amended Plan filed on June 6, 2016, and confirmed on June 24, 2016, provides for direct payment to Movant. (ECF No. 21 & 34.)

4. **Debtor** is indebted to **Movant** in the principal amount of \$73,804.19 plus interest and advances. Said debt is secured by a deed of mortgage upon the property made reference to in

paragraph one (1).

5. **Debtor** is in arrears FIVE (5) post-petition payments of \$701.07, for a total post-petition arrearage of \$3,505.35. **See Exhibit I.**

6. The arrearage expressed herein does not pertain to the pre-petition arrears which were to be cured through the plan.

7. That **Debtor** has failed to provide **Movant** with adequate protection of its secured interest in the property made reference to in paragraph one (1), and their failure to keep current with their payments to **Movant** is sufficient cause for this Honorable Court to grant the relief herein requested. **11 U.S.C. §362(d)(1)**

8. That **JOSE RAMON CARRION MORALES, ESQ.**, is the duly appointed Chapter 13 Trustee in this case.

9. That **Debtor** is not in active in military service as evidenced by the enclosed certifications regarding compliance with the applicable provisions of the Service members Civil Relief Act ("SCRA"), 50 U.S.C. App. § 501 *et seq.* See Exhibit II.

WHEREFORE, Movant respectfully prays for an order of relief from the stay provided by **11 U.S.C. §362(a)**, thus authorizing **Movant** to proceed with the foreclosure of the mortgage against the property herein described with such further relief as it may deem just and proper.

NOTICE

Within fourteen (14) days after service as evidenced by the certification, any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Clerk's office of the U.S. Bankruptcy Court for the District of Puerto Rico. **Local Rule 4001-1.** If no objection or other response is filed within the time allowed herein, the paper will be deemed unopposed and may be granted unless: (i) the requested relief is forbidden by law; (ii) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires

otherwise.

I HEREBY CERTIFY: That on this same date, I electronically filed the foregoing document with the Clerk of the Court using the **CM/ECF SYSTEM** which will send notification of the present filing to the parties in this case registered in said system; by regular mail to non CM/ECF participants and by certified mail to Debtor(s), his/her attorney, the Chapter 13 Trustee and the U.S. Trustee.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on this the 2nd day of October, 2016.

VAZQUEZ & VIZCARRONDO LLP
Attorneys for DLJ MORTGAGE CAPITAL INC.
PO BOX 195389
SAN JUAN, PUERTO RICO 00919-5389
TEL. (787) 999-5252
FAX (787) 751-1038

s/NATALIA M. BATISTA-VAZQUEZ
USDC231810
nbatista@vvalaw.com

EXHIBIT I

Debtor

Number of Missed Payments	From	To	Missed Principal and Interest	Missed Escrow (if applicable)	Monthly Payment Amount	Total Amounts Missed
5	04/01/2016	08/01/2016	\$682.24	\$18.83	\$701.07	\$3,505.35
Escrow Shortage (disbursed insurance):						0.00
Less post-petition partial payments (suspense balance):						-0.00
Total:						\$3,505.35

Abimael Ortiz Figueroa
16-002801(BKT-13)
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As of the date listed in this paragraph, the total post-petition arrearage/delinquency is **\$3,505.35**.¹ This is the amount necessary to cure any post-petition default on or about the date hereof.

7. Upon information and belief, the unpaid amount of the prepetition arrearage and any other amounts to be cured under the confirmed plan is **\$19,611.25**, as of the execution of this document, which constitutes the prepetition default.²

8. The next payment under the terms of the Note will come due on **September 1st, 2016** and is in the amount of **\$701.07**

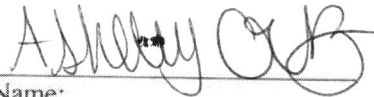
9. Attached as **Exhibit A** is post-petition payment history.

10. The Debtor (is/ are not) being evaluated for a loss mitigation option. If the Debtor [is/are] being evaluated for loss mitigation options, the current status is as follows:

N/A.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 25 day of October, 2016.



Name:
Title: **Ashley Cruz**
Document Control Officer
Select Portfolio Servicing, Inc.

¹ The total of missed post-petition payments for this impounded loan includes any missed escrow payments. Such missed escrow payments include amounts assessed for taxes and insurance and any previously assessed escrow shortage amount (if applicable). To avoid duplication, post-petition advances (if any) made for insurance, real estate taxes, or similar charges are not listed separately to the extent such advances would have been paid from the missed escrow payments. As part of the next annual RESPA analysis, the Bank will determine whether the escrow payments assessed to the debtor (including the missed escrow payments) result in a projected escrow shortage or overage. All rights are hereby reserved to assert or request any escrow amounts in accordance with RESPA and the total post-petition arrearage/delinquency is qualified accordingly. In addition, the amounts set forth herein do not include any legal fees or expenses of counsel incurred by Movant in connection with seeking the relief requested in the Motion.⁴ The amount set forth herein is based on the amount reflected on the trustee's ledger. Additional information regarding this amount is available upon request.

² The amount set forth herein is based on the amount reflected on the trustee's ledger. Additional information regarding this amount is available upon request.



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**Status Report
Pursuant to Servicemembers Civil Relief Act**

EXHIBIT II

Last Name: ORTIZ FIGUEROA

First Name: ABIMAEL

Middle Name:

Active Duty Status As Of: Nov-02-2016

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individuals' active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date			

The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA
This response reflects whether the individual or his/her unit has received early notification to report for active duty			

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty.

Mary M. Snavelly-Dixon

Mary M. Snavelly-Dixon, Director
Department of Defense - Manpower Data Center
4800 Mark Center Drive, Suite 04E25
Arlington, VA 22350

The Defense Manpower Data Center (DMDC) is an organization within the Department of Defense (DoD) that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Servicemembers Civil Relief Act (50 USC App. § 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced only a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual was on active duty for the active duty status date, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via this URL: <https://kb.defense.gov/PublicQueries/publicQuestions/FaqsAnswers.jsp?Subject=Locating Service Members or Getting a Mailing Address>. If you have evidence the person was on active duty for the active duty status date and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. § 521(c).

This response reflects the following information: (1) The individual's Active Duty status on the Active Duty Status Date (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date (3) Whether the individual or his/her unit received early notification to report for active duty on the Active Duty Status Date.

More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d) (1). Prior to 2010 only some of the active duty periods less than 30 consecutive days in length were available. In the case of a member of the National Guard, this includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrator (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

Coverage Under the SCRA is Broader in Some Cases

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Those who could rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected

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Certificate ID: 62E3OEC4U465J00



**Status Report
 Pursuant to Servicemembers Civil Relief Act**

Last Name: ORTIZ-FIGUEROA

First Name: ABIMAE

Middle Name:

Active Duty Status As Of: Nov-02-2016

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
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NA	NA	No	NA
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Certificate ID: H2SDREB44465280



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Last Name: ORTIZFIGUEROA

First Name: ABIMAEEL

Middle Name:

Active Duty Status As Of: Nov-02-2016

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Active Duty Start Date	Active Duty End Date	Status	Service Component
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Certificate ID: Y265VED4Z466Q60



Status Report
Pursuant to Servicemembers Civil Relief Act

Last Name: ORTIZ

First Name: ABIMAEEL

Middle Name:

Active Duty Status As Of: Nov-02-2016

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Certificate ID: 82TD9E047466MF0



Status Report Pursuant to Servicemembers Civil Relief Act

Last Name: FIGUEROA ORTIZ

First Name: ABIMAEEL

Middle Name:

Active Duty Status As Of: Nov-02-2016

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
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Certificate ID: A2V4JEA414674D0



**Status Report
 Pursuant to Servicemembers Civil Relief Act**

Last Name: FIGUEROA-ORTIZ

First Name: ABIMAEEL

Middle Name:

Active Duty Status As Of: Nov-02-2016

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individuals' active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date			

The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA
This response reflects whether the individual or his/her unit has received early notification to report for active duty			

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty.

Mary M. Snavelly-Dixon

Mary M. Snavelly-Dixon, Director
 Department of Defense - Manpower Data Center
 4800 Mark Center Drive, Suite 04E25
 Arlington, VA 22350

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The DoD strongly supports the enforcement of the Servicemembers Civil Relief Act (50 USC App. § 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced only a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual was on active duty for the active duty status date, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via this URL: <https://kb.defense.gov/PublicQueries/publicQuestions/FaqsAnswers.jsp?Subject=Locating Service Members or Getting a Mailing Address>. If you have evidence the person was on active duty for the active duty status date and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. § 521(c).

This response reflects the following information: (1) The individual's Active Duty status on the Active Duty Status Date (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date (3) Whether the individual or his/her unit received early notification to report for active duty on the Active Duty Status Date.

More information on "Active Duty Status"

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Certificate ID: D2B77E44V467F00



Status Report Pursuant to Servicemembers Civil Relief Act

Last Name: FIGUEROAORTIZFirst Name: ABIMAEL

Middle Name:

Active Duty Status As Of: Nov-02-2016

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individuals' active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date			

The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA
This response reflects whether the individual or his/her unit has received early notification to report for active duty			

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Certificate ID: 02E73EA4U467970



Status Report
Pursuant to Servicemembers Civil Relief Act

Last Name: FIGUEROA

First Name: ABIMAEL

Middle Name:

Active Duty Status As Of: Nov-02-2016

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individuals' active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
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Certificate ID: 62382ED43467D40